

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

February 24, 1994
AO-94-06

Michael K. Crossen, Esq.
50 Rowes Wharf
Boston, MA 02110

Re: M.G.L. c. 55, sections 13 and 15

Dear Mr. Crossen:

This letter is in response to your December 16, 1993 request for an advisory opinion regarding the applicability of M.G.L. c. 55, ss. 13 and 15 to certain activities.

You have stated that you serve as a board member, by appointment of the Governor, on two boards:

- (1) Massachusetts Technology Development Corporation ("MTDC"), which was created pursuant to Chapter 497 of the Acts of 1978 and provides for no salary or per diem; and
- (2) Massachusetts Low-Level Radioactive Waste Management Board ("LLRWMB"), which was created pursuant to M.G.L. c. 111H and provides for a \$50 per diem which you do not accept.

You have asked the following questions with respect to your involvement in the MTDC and LLRWMB:

- (1) With regard to your involvement with the MTDC, are you prohibited from raising funds for any political campaign or candidate?
- (2) With regard to your involvement with the MTDC, are you prohibited from serving as a treasurer to any political campaign or candidate for public office?
- (3) With regard to your involvement with the LLRWMB, are you prohibited from raising funds for any political campaign or candidate?
- (4) With regard to your involvement with the LLRWMB, are you prohibited from serving as a treasurer to any political campaign or candidate for public office?

I. Discussion - Based upon the facts noted above, your questions can be answered by determining (1) whether a member of each of the referenced Boards is a "person employed for

compensation . . . by the commonwealth" (a "person in the service") within the meaning of M.G.L. c. 55, s. 13 and (2) whether a Board member in each of the referenced Boards is a person in the service within the meaning of M.G.L. c. 55, s. 15. After answering these questions, I will address your specific questions.

A. Section 13.

Section 13 of M.G.L. c. 55, s. 13 states:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purposes whatever. . .

It has been the long-standing opinion of this office that section 13's prohibition against solicitation by certain public employees applies to both full-time and part-time employees including persons who serve on various boards and commissions. Therefore, a Board member would be subject to section 13's restrictions if deemed "employed for compensation." See AO-92-07.

In earlier opinions, this office had advised that small levels of compensation were "de minimus" and, therefore, did not rise to the level of compensation. See AO-88-18 (\$1,000 annual payment was "de minimus"), AO-89-10 (\$200 annual payment was "de minimus"). However, these opinions have been superseded by more recent opinions which have advised that persons serving on boards and commissions are considered compensated if they are paid "any sum" for their services. See AO-90-05, AO-90-10 and AO-92-07.

In AO-92-07, this office advised the Chairman of the Board of Registration in Medicine that \$35 per day would constitute compensation. The payment of \$50 dollars per day for your service on the LLRWMB would also constitute compensation.

Persons are not considered compensated if they merely are reimbursed for actual expenses incurred or on a per diem basis provided the per diem rate reasonably reflects actual expenses and can be substantiated. See AO-91-09. The LLRWMB per diem is over and above reimbursement allowed for reasonable expenses. M.G.L. c. 111H, s. 3(c). Moreover, M.G.L. c. 111H, s. 3(c), which states that LLRWMB Board members "not otherwise employed by the commonwealth" shall receive the per diem, supports the conclusion that as a LLRWMB member you are a person employed for compensation by the commonwealth.

You have stated that you receive no compensation as a member of the Board of the MTDC. The Legislature, in creating the Board, provided that each member is entitled only to reimbursement of "actual and necessary expenses incurred in the

performance of his official duties." See Section 2 of Chapter 497 of the Acts of 1978. Accordingly, as a member of MTDC, you are not "a person employed for compensation by the commonwealth." However, even if you are not "a person employed for compensation by the commonwealth" as a member of MTDC, you might still be "a person in the service of the commonwealth" within the context of Section 15.

B. Section 15.

Section 15 of M.G.L. c. 55 states:

No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever.

Whether your fundraising activities are limited by Section 15 depends, in part, on the definition of "person in the service of the commonwealth." This office has previously advised that the phrase "was intended to include any elected, appointed or other person, regardless of compensation, who is providing significant public services to the commonwealth or one of its subdivisions or authorities." See AO-92-01. The office has stated that "the fact of official appointment or election to an office is an important, if not essential, criterion in determining whether someone is a 'person in the service' for purposes of section 15." Id. For example, a part-time consultant receiving \$1,500 to \$2,000 from a municipality was a person in the service since there was an official contractual relationship. On the other hand, unappointed, volunteer High School PTO members would probably not be persons in the service. (Compare AO-92-01 and AO-85-04).

You were appointed to each Board by the Governor and in each Board you provide significant public services to the commonwealth. Therefore, if you serve on either Board, you would be considered to be a person in the service, and section 15 would preclude you from delivering any monies or checks directly to any other person in the service. More significantly, any other person in the service would be prohibited from giving or delivering a contribution to you.

C. Serving as Treasurer for a Political Committee.

Neither section 13 nor section 15 explicitly indicate whether public employees or persons in the service may serve as treasurers for political committees. Sections 13 and 15 were designed to assure fairness and the appearance of fairness in the electoral process. See Anderson v. Boston, 376 Mass. 178, 193 (1978). They "demonstrate a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls."

Id., at 187. The restrictions imposed by the two sections, however, range from section 13's prohibition against "solicitation or receipt" to section 15's prohibition against "giving or delivering" of contributions. This office has interpreted the two sections as imposing different obligations on those who would be treasurers of political committees.

Persons employed for compensation by the commonwealth are absolutely prohibited from serving as treasurers of political committees. See AO-89-11, in which this office stated that:

Section 13 prohibits any person employed for compensation by the commonwealth from directly or indirectly soliciting or receiving contributions for any political purpose. . . [a public employee is prohibited from] serving as a treasurer of [a] political committee, planning, directing or organizing fundraising activities, soliciting money from potential contributors and accepting contributions on behalf of [a candidate].

In contrast, persons in the service, although not absolutely prohibited from serving as treasurers of political committees, must overcome a significant obstacle imposed by the statute if they are to serve in that capacity.

A person in the service who is also a treasurer cannot knowingly participate in political fundraising activities which involve the delivery of contributions from other persons in the service. Participation in such delivery would allow violation of Section 15, which prohibits a person in the service from giving political contributions, either directly or indirectly, to another person in the service.

This office has consistently advised candidates and political committees that a person in the service cannot be a treasurer of a political committee unless the committee adopts a policy of not accepting contributions from persons in the service. See AO-92-16. As this office stated in AO-88-18:

We believe that it would be very difficult for the treasurer of a [municipal] political committee, as the chief financial person, to avoid receiving monies from other public officials, including full-time employees such as policemen, firemen and teachers, unless there was an outright ban by the committee on receiving such monies.

Therefore, if you are a person in the service, you may not serve as a treasurer of a political committee, absent a ban on contributions from other persons in the service.

II. Specific Questions - As noted above, the answers to your specific questions flow directly from the conclusions that: (1) a member of the LLRWMB is a "person employed for compensation" within the scope of section 13; and (2) a member of either the MTDC or LLRWMB is also a "person in the service of the

commonwealth" within the scope of section 15.

A. With regard to your involvement with the MTDC, are you prohibited from raising funds for any political campaign or candidate?

Since your participation in MTDC does not mean you are a "person employed for compensation by the commonwealth" within the scope of section 13, participation in that Board does not prohibit your soliciting contributions for a political campaign or candidate.

B. With regard to your involvement with the MTDC, are you prohibited from serving as a treasurer to any political campaign or candidate for public office?

Since your appointment to MTDC means that you are a "person in the service" within the scope of section 15, you may serve as treasurer to a political committee only if the committee bans receipt of monies from all other persons in the service.

C. With regard to your involvement with the LLRWMB, are you prohibited from raising funds for any political campaign or candidate?

Since your participation in LLRWMB results in your being a "person employed for compensation by the commonwealth" within the scope of section 13, participation in that Board prohibits your soliciting contributions for a political campaign or candidate.

This office has concluded that where the Legislature has allocated compensation for a position, a person who fills the position is "employed for compensation" regardless of whether he renounces his compensation. See AO-92-07. Your decision to not accept the compensation allocated by the Legislature for LLRWMB members does not affect my conclusion that you are subject to section 13's prohibition against political solicitation.¹

D. With regard to your involvement with the LLRWMB, are you prohibited from serving as a treasurer to any political campaign or candidate for public office?

Since your appointment to LLRWMB means that you are a "person employed for compensation by the commonwealth" within the scope of section 13, you may not serve as treasurer to a political committee.

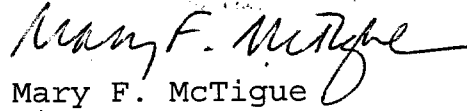
1. You should note that a public employee wishing to participate in campaign fundraising activities is exempt from the requirements of section 13 if he takes an unpaid leave of absence of at least four months before a primary election or at least six months prior to a general election. See AO-92-07 and advisory opinions cited therein.

Michael K. Crossen, Esq.
February 24, 1994
Page 6

This opinion has been based solely upon the representations set forth in your letter and solely within the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have further questions regarding this or any other campaign finance matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mary F. McTigue".

Mary F. McTigue
Director

MFm/cp